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FEDERAL COMMUNICATIONS COMMISSION
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March 13, 1998

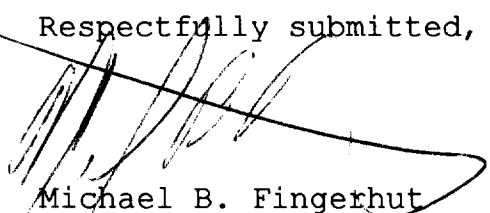
Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street N.W.
Washington D.C. 20554

**Re: Comments of Sprint Corporation in CC Docket No.
97-211**

Dear Ms. Salas:

Enclosed herewith is a 3.5 inch diskette containing the
Comments of Sprint Corporation in the above-referenced
proceeding. If you have any questions, please call me at 828-
7438.

Respectfully submitted,


Michael B. Fingerhut
General Attorney

Enclosure

c: Michelle Carey w/enc.
Office of the Chief,
Network Services Division, w/enc.

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Before the
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Washington, D.C. 20554

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MAR 10 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Applications of WorldCom, Inc. and)
MCI Communications Corporation for) CC Docket No. 97-211
Transfer of Control of MCI)
Communications to WorldCom, Inc.)
_____)

COMMENTS OF SPRINT CORPORATION

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March 13, 1998

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY.....	ii
I. INTRODUCTION: THE PROPOSED MERGER REPRESENTS A SEVERE THREAT TO THE COMPETITIVENESS OF THE CORE INTERNET BACKBONE MARKET.....	2
II. THE COMMISSION PLAINLY HAS THE JURISDICTION TO CONSIDER THE COMPETITIVE IMPLICATIONS OF THE PROPOSED MERGER.....	2
III. WORLDCOM'S ACQUISITION OF MCI WILL ENABLE THE COMBINED ENTITY TO EXERCISE MARKET POWER IN THE CORE INTERNET BACKBONE MARKET.....	6
A. The Current Structure Of The Core Internet Backbone Market.....	6
B. With Its Acquisition of MCI, WorldCom Will Command An Overwhelming Share Of The Core Internet Backbone Market.....	10
C. The Combined WorldCom/MCI Entity's Dominance of the Core Internet Backbone Market Will Likely Give It The Ability To Raise Its Current Rivals' Costs And Deter Entry.....	13
IV. CONCLUSION.....	18

SUMMARY

A combined WorldCom/MCI entity will create a powerful new Internet entity that will be able to exercise substantial dominance in the core Internet backbone market. Such dominance will likely reduce competition in this core market and, consequently, raise prices for Internet services.

There is no question of the Commission's jurisdiction here. The Commission's public interest responsibilities require it to examine the likely affect of a proposed merger on Commission policies promoting competition. Moreover, while services provided on the Internet may be enhanced, the direct threat to competition here is created by the consolidation of Worldcom's and MCI's core Internet backbone facilities over which such services are transported. As the Joint Applicants concede, these are basic, "garden variety" transmission facilities indistinguishable from those used to carry traffic on the PSTN.

Although the Joint Applicants claim that there are a plethora of Internet backbone providers vigorously competing with each other, such Internet providers are not comparable to the proposed merged entity. Internet backbone providers fall into two tiers. The first tier consists of core Internet backbone providers that offer ubiquitous Internet connectivity. They exchange traffic with each other on a settlements-free basis. The second tier of backbone providers typically rely on facilities obtained from core backbone providers to transmit

traffic. To reimburse the cost of these facilities, the second tier providers must pay for interconnection to the core providers' networks. The first tier of core Internet backbone providers comprise the relevant market here.

All available data establish that the combined WorldCom/MCI Internet backbone entity will become the overwhelmingly dominant provider of core Internet backbone services. In fact, the Joint Applicants' share of the core Internet backbone market post-merger will be approximately twice as large as the share of their nearest core backbone rival. This will create asymmetries in Internet connectivity and will, in turn, place at risk the current settlements-free peering arrangements among core providers. The WorldCom/MCI combination may be able to control access to the Internet backbone market in much the same way as an RBOC currently controls access to its in-region market. Under such circumstances, in the absence of competition, the Commission will be required to undertake the regulation of the Internet to ensure reasonable and non-discriminatory rates.

Sprint does not suggest that the Commission consider regulating the core Internet backbone market. Rather, Sprint believes that the Commission should adopt a structural solution in order to protect competition. Specifically, the Commission should require as a condition of the WorldCom/MCI merger, that the merging parties spin off either WorldCom's or MCI's Internet assets.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
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Applications of WorldCom, Inc. and)	
MCI Communications Corporation for)	CC Docket No. 97-211
Transfer of Control of MCI)	
Communications to WorldCom, Inc.)	
_____)	

COMMENTS OF SPRINT CORPORATION

Sprint Corporation, pursuant to the Commission's Order (DA 98-384) released February 27, 1998 in the above-captioned proceeding, hereby respectfully submits its Comments on the Joint Reply of WorldCom and MCI to Petitions to Deny and Comments filed January 28, 1998 (Joint Reply). As discussed below, the combined WorldCom/MCI entity will be able to exercise substantial dominance in the core Internet backbone market. Unless the Commission acts to prevent the accumulation of such market power by requiring structural changes as a condition for approving the proposed merger, e.g., through the divestiture of WorldCom's or MCI's Internet assets, it will be forced to regulate the core Internet backbone market to protect the public interest in much the same way as it is required at the present time to regulate the origination and termination of interstate calls on the Public Switched Telephone Network.

I. INTRODUCTION: THE PROPOSED MERGER REPRESENTS A SEVERE THREAT TO THE COMPETITIVENESS OF THE CORE INTERNET BACKBONE MARKET.

It is becoming increasingly clear that combining the Internet backbone networks of MCI and WorldCom (which has itself already combined its own Internet backbone network with those of UUNet, Compuserve and ANS) will likely reduce competition. At this point, there can be very little doubt that such a combination will result in a powerful new Internet entity, far larger than any of its core Internet backbone competitors, and perhaps larger than all of these competitors put together. The sheer size and scope of this consolidated Internet carrier relative to its competitors will provide it with a significant increase in market power that can be used to reduce competition in the core Internet backbone market and, consequently, raise prices for Internet services themselves.¹

II. THE COMMISSION PLAINLY HAS THE JURISDICTION TO CONSIDER THE COMPETITIVE IMPLICATIONS OF THE PROPOSED MERGER.

The Commission's responsibility to determine whether a proposed merger is in the public interest includes the requirement that the Commission analyze the merger's likely

¹The Joint Applicants' position on the effect of the merger on the competitiveness of the Internet market is purely defensive. They argue only that the proposed merger will not "slow the dynamic growth" of the Internet or "diminish the vigorous competition among providers of Internet services." Joint Reply at 66. WorldCom and MCI do not present any serious justification for this claim and Sprint believes that they cannot.

effect "on Commission policies encouraging competition..." *Bell Atlantic/NYNEX Merger Order*, 12 FCC Rcd 19985, 20003 (¶32) (1997). If the Commission determines that a proposed merger is likely to lessen competition in violation of Section 7 of the Clayton Act, it has the authority under both the Communications Act and the Clayton Act to impose conditions on the merger as are necessary in the public interest to cure such violation. *Id.* at 20001 (¶29 and fn. 57).

Although the provision of Internet services will be adversely affected by the proposed merger, the direct threat to competition here involves only the transmission of the services, not the services themselves. There is no question as to the Commission's jurisdiction over such transmission. Although the services provided on the Internet may be, and typically are, enhanced, the underlying facilities over which they are transported are not. The WorldCom/MCI Joint Reply makes this very same point. It states:

The alleged source of any competitive issue presented by the MCI WorldCom merger arises from the transmission facilities which MCI and WorldCom would utilize to provide Internet services. These transmission facilities carry all kinds of traffic -- voice and data, circuit-switched and packet-switched -- and the transmission capacity used for Internet services is fully substitutable with capacity used for voice and other traffic. See Carlton/Sider Decl.

¶61.

Joint Reply at 71-72. Consequently, there is no reasonable basis for an argument that such "fully substitutable" facilities are beyond the Commission's jurisdiction simply because they are used to transmit Internet services.

On the other hand, although the facilities devoted to Internet use may be fungible with other facilities, this does not mean, contrary to the Joint Applicants' claim, that core Internet backbone service is not a separate market. Rather, a new provider -- or even an existing provider -- with all the facilities in the world cannot effectively compete in the provision of core Internet backbone service unless it can obtain access to other Internet subscribers, net sites, databases, servers, etc., located on the networks of other core Internet backbone providers. To the extent that a new or existing provider must rely for such access on another provider which has obtained significant market power relative to its competitors, it will be at a disadvantage in obtaining such access at a reasonable price, or perhaps at all. The existence of such a dominant provider of core Internet backbone service may make competition difficult, or even impossible, even though potential competitors have virtually unlimited access to the necessary facilities. Thus, while facilities may be substitutable, there are substantial barriers to companies seeking to enter the core Internet backbone market.

Nevertheless, Sprint does not suggest that the Commission consider regulating the core Internet backbone market. While there is no question that such regulation is legally permissible, there is also no question that it is ill-advised so long as viable competition exists. The best thing that the Commission can do is to protect such competition by requiring, as a condition of the WorldCom/MCI merger, that the merging parties spin off either WorldCom's or MCI's Internet assets.

Such divestiture -- and the concomitant protection of competition that it will afford -- is all that is needed to protect the public interest at this juncture. Internet backbone services have never been subjected to regulation by the FCC. Rather, the Internet backbone market has developed, indeed flourished, by virtue of the existence of the competitive market in which a core of similarly-sized backbone networks have exchanged and transited each other's traffic through settlements-free peering. However, the competitiveness of this market is threatened by the substantial increase in the size and market share of the core Internet backbone market that would be held by WorldCom/MCI after the merger. Thus, the proposed merger should not be permitted without requiring the divestiture of either WorldCom's or MCI's Internet assets, so that the merged entity does not acquire market power.

Sprint shares the concerns expressed by MCI and WorldCom in the Joint Reply about the extension of regulation to the Internet. Far from recommending such an extension, Sprint urges the Commission to prevent the necessity for regulation by applying a structural remedy which will help the core Internet backbone market to remain competitive.²

III. WORLDCom'S ACQUISITION OF MCI WILL ENABLE THE COMBINED ENTITY TO EXERCISE MARKET POWER IN THE CORE INTERNET BACKBONE MARKET.

The addition of MCI's core Internet backbone network to the core backbone networks already amassed by WorldCom through its acquisitions of UUNET, ANS, and Compuserve will give the combined WorldCom/MCI entity significant market power and thereby enable it to raise the costs of its existing core backbone competitors and limit the entry of new competitors.

A. The Current Structure Of The Core Internet Backbone Market.

In order to better understand the likely competitive consequences of the proposed WorldCom/MCI merger on the provision of Internet services, it is perhaps useful to briefly describe the provision of Internet backbone services. The Joint

²The European Commission has decided to open an inquiry into the proposed WorldCom/MCI merger because of concerns about the merged WorldCom/MCI's "combined market share in relation to the supply of Internet backbone services." Press Release entitled "Commission to carry out detailed inquiry into proposed merger between WorldCom and MCI," released March 4, 1998.

Applicants claim that as of the Fall of 1997, there were at least 37 national Internet backbone providers "competing vigorously with each other."³ What they neglect to mention is that these so-called national Internet backbone providers are not comparable in size, scope, customer base, web sites connected their networks, or the services they can offer other ISPs.

As the market has evolved, Internet backbone providers fall into one of two tiers. The first tier consists of core Internet backbone providers that own and control their own networks; maintain nodes with default-free routers; exchange traffic with all other core backbone providers on a settlements-free basis (essentially a "bill-and-keep" system); interconnect at a minimum of five major national access points (NAPs) and on a private bilateral basis with other backbone providers and ISPs;⁴

³Joint Reply at 74, citing the Fall 1997 edition of Boardwatch Magazine's "Directory of Internet Service Providers." Boardwatch concedes, however, that "[d]efining a national backbone is problematic at best" and that some of those entities claiming to have a national backbone are connected only in a few regional states. *Id.* at 8. Moreover, Boardwatch notes that at least some of these "national" backbones are "pretty shaky." See, "The Big, The Confused and the Nasty" by Jack Rickard appearing in the June 1997 edition of Boardwatch at 4.

⁴Because of congestion and performance problems at the NAPs, the trend in the industry has been to enter into private bilateral interconnection arrangements between backbone providers. In any case, Bell Atlantic reports that there are currently 11 major NAPs in the United States and that WorldCom owns 5 of them, "including the two dominant NAPs, MAE East and MAE West." Petition to Deny at 11. The Joint Applicants challenge Bell Atlantic's figures and claim that there are currently 39 NAPs in operation in the United States. Joint Reply at 86-87. But they do not dispute Bell Atlantic's assertion that WorldCom owns the two dominant NAPs. Moreover, although they

and offer high-speed transmission facilities that connect their nodes and that transmit high volumes of Internet traffic both nation-wide and globally. Under the so-called "peering arrangements" among core Internet backbone providers, these providers will only deliver traffic to each other that is destined for the core provider's end users or ISPs' customers. Access to any one of the core backbone providers offers ubiquitous Internet connectivity.

The second tier of backbone providers also maintains nodes with default-free routers and offers transmission facilities -- albeit at lower speeds than those of core providers -- connecting their nodes. However, they typically rely on facilities obtained from core backbone providers to transmit traffic throughout the United States and to other countries. Because the core backbone providers offer services to them that are costly to provide, the second tier providers must pay for interconnection to the core providers' networks.⁵

Core Internet backbone services comprise a relevant antitrust market. Access to any core backbone provider permits any Internet user to reach any other Internet user through the

claim that the cost of establishing a NAP is low, they offer no cost data to document such claim.

⁵The overwhelming majority of ISPs do not maintain their own networks but obtain Internet connectivity from backbone providers.

interconnection arrangements that exist among core providers. Although there may be other routing arrangements through which Internet users can interconnect with one another, these alternatives are vastly inferior to access through a core backbone provider. Thus, a hypothetical monopolist that controlled the core Internet backbone market would be able to raise the price of access service. Under the *Horizontal Merger Guidelines* of the Department of Justice and Federal Trade Commission (issued April 2, 1992 and revised April 8, 1997), the ability of a hypothetical monopolist to raise prices is sufficient to demonstrate that the provision of core Internet backbone services is a relevant antitrust market.

Currently, there are four core backbone providers: WorldCom, MCI, Sprint, and GTE (through its ownership of BBN). These core backbone providers compete vigorously to provide facilities to Tier 2 backbone providers as well as to other ISPs. Such competition enables the Tier 2 providers and other ISPs to obtain access to core Internet backbone facilities at reasonable rates.

B. With Its Acquisition of MCI, WorldCom Will Command An Overwhelming Share Of The Core Internet Backbone Market.

Plainly, the market structure described above would change if WorldCom were to acquire MCI and MCI's core Internet backbone network. All available data establish that the combined WorldCom/MCI Internet backbone entity will become the overwhelmingly dominant provider of core Internet backbone services. Based upon survey data compiled by Boardwatch (see, "The Big, The Confused and the Nasty" by Jack Rickard in the June 1997 issue), about 41 percent of non-backbone ISPs are currently connected to the MCI backbone and about 23 percent are currently connected to the UUNet, ANS, and Compuserve backbones, so that 64 percent of all non-backbone ISPs would be connected to WorldCom/MCI after the merger. Similarly, MCI currently has about 35 percent and UUNet/ANS/Compuserve currently have about 20 percent of total connections, so that the combined WorldCom/MCI would have about 55 percent of all connections after the merger.⁶ By way of comparison, Sprint, the next largest core backbone provider, will reach only about 31 percent of the ISPs and have only 26 percent of total connections. Thus, the WorldCom/MCI entity will have twice the market share in this regard as its nearest competitor.

Other sources of information also confirm the dominant position that a combined WorldCom/MCI entity would command in the provision of core Internet backbone services. For example, according to the January 19, 1998 edition of Internet Week, MCI currently carries 26 percent of Internet backbone traffic. WorldCom's UUNet currently carries 20 percent of such traffic and, when added to the backbone traffic carried by other WorldCom entities, e.g., ANS and Compuserve, WorldCom's current share of Internet backbone traffic increases to 28 percent. Because the combined WorldCom/MCI entity would carry 54 percent of all backbone traffic after the merger, such combination would drastically change the structure of the core Internet backbone market. Bell Atlantic also has introduced evidence into this proceeding showing that post-merger, WorldCom/MCI's share of Internet backbone traffic would range anywhere from 49 percent to near 80 percent. Bell Atlantic Petition to Deny at 5.⁷

In their Joint Reply, WorldCom and MCI not only dispute the fact that there is a discrete market for core Internet backbone service, they also specifically challenge some of the share estimates of such market that were submitted by Bell Atlantic

⁶Although the share of total connections may not correspond exactly to the appropriate market share, it is likely to be highly correlated with it.

⁷The Department of Justice is currently compiling additional information from carrier tests and measurements conducted the week of March 1, 1998, which may shed additional light on market shares.

and others as misleading. Joint Reply at 75-76. They claim that the only reliable measure of market share is Internet revenues and they estimate that their combined share of such revenues amounts to only 20 percent. *Id.* at 76. But using total Internet revenues suffers many of the same problems that Joint Applicants allege make the market share information introduced by others into the record unreliable. Total Internet revenues, as reported by Joint Applicants, appear to combine revenues from core backbone services sold to non-core backbone providers and other ISPs in the input or upstream segment of the market with revenues generated by selling Internet access and other Internet services to end users. The focus of the Commission's inquiry here should be on whether the combined WorldCom/MCI entity will be able to exercise market power in the core Internet backbone facilities market, *i.e.*, the upstream market. It is the ability of such an entity to raise the price or degrade the quality of inputs that ultimately will be detrimental to users in the downstream market. Thus, the Joint Applicants' estimate of their market share of total Internet revenues is irrelevant.

C. The Combined WorldCom/MCI Entity's Dominance of the Core Internet Backbone Market Will Likely Give It The Ability To Raise Its Current Rivals' Costs And Deter Entry.

As shown above, the Joint Applicants' share of the core Internet backbone market post-merger will, under any relevant measurement, be approximately twice as large as the share of their nearest core backbone rival. This will place at risk the current settlements-free peering arrangements among core providers which have developed in a situation in which all current core backbone providers have roughly equivalent market shares. See Joint Reply at 83 (settlements-free "peering makes sense when the peers exchange roughly comparable amounts of traffic"). Indeed, the combined WorldCom/MCI entity may attempt to declare that all other current backbone providers, regardless of the size and scope of their backbone networks, must pay it for interconnection to its backbone facilities. Thus, the costs of the current core backbone competitors of MCI and WorldCom may increase, and these cost increases will, in turn, have to be passed on to their Tier 2 and other ISP customers. Moreover, if this occurs, the rates charged to Tier 2 and other ISPs by the combined WorldCom/MCI entity for interconnection to its Internet backbone will also increase.

The WorldCom/MCI combination may be able to control access to the Internet backbone market in much the same way as an RBOC

currently controls access to its in-region market. Under such circumstances, in the absence of competition, the Commission will be required to undertake the regulation of the Internet to ensure reasonable and non-discriminatory rates.

The Joint Applicants would have the Commission dismiss claims that they will be able to exercise market power in the provision of core Internet backbone services after the merger. They argue that the Internet "is not controlled, nor susceptible to control by ISP backbone providers." This is so, according to Joint Applicants, because "the existence of multiple national and regional backbone providers enables traffic to be routed in many different ways." Joint Reply at 77.

The difficulty with this argument is that it ignores the asymmetries in Internet connectivity that will be created by the merger. After the merger, the combined WorldCom/MCI entity will have a critical mass of end-users linked to its network either directly or indirectly through Tier 2 and other ISPs that obtain Internet connectivity through such entity. Because a fundamental purpose of the Internet is to enable end users to communicate with one another, at some point all ISPs will have to interconnect to the merged WorldCom/MCI backbone in order to reach WorldCom/MCI's customers.

Such merger-induced asymmetries leads to asymmetries in the bargaining power of the merged WorldCom/MCI vis-à-vis its core

backbone rivals. By failing to interconnect with a combined WorldCom/MCI, these now relatively smaller rivals of core Internet backbone services would not be able to provide their customers access to WorldCom/MCI's critical mass of customers and desirable web sites. In contrast, a merged WorldCom/MCI may lose little from deciding not to interconnect with the former core backbone providers given their relatively smaller customer base. This is the very reason why entry into the core Internet backbone market will be difficult after a merger of WorldCom and MCI. By failing to interconnect or degrading the interconnection, the merged entity has the ability and incentive to induce customers to leave their current non-WorldCom/MCI core backbone provider and switch to directly to WorldCom/MCI or to a Tier 2 or other ISP customer of WorldCom/MCI. Indeed, this is the very reason why entry into the core Internet backbone market would become more difficult after the merger of WorldCom and MCI. Because of the large market share that the merged entity would possess, new entrants are unlikely to be able to obtain the critical mass of end-users that would permit them to become core Internet backbone providers.

The "existence of multiple national and regional backbone providers" does not affect these conclusions. Given the merger-produced disparities in size between WorldCom/MCI and these "multiple providers," WorldCom/MCI will be able to increase its

rates for interconnection to other backbone providers.⁸ If a smaller backbone provider were to balk at paying the increased rates, WorldCom/MCI can simply refuse to interconnect entirely. Alternatively, WorldCom/MCI can degrade the quality of interconnection by refusing to provide access to high speed facilities, or by refusing to interconnect on a private bilateral basis, thereby forcing the smaller provider to interconnect at a WorldCom/MCI-owned NAP that may be congested and unable to handle efficiently the volumes of Internet traffic sent by the smaller backbone provider.

Joint Applicants further argue that they will be unable to exercise any market power post-merger in the provision of Internet backbone facilities since barriers to entry are low. Joint Reply at 77. However, becoming a core Internet backbone provider is not as simple as the Joint Applicants pretend. As discussed above, a core provider must, at the very least: (1) maintain its own high speed facilities capable of transmitting high volumes of Internet traffic both domestically and

⁸Contrary to the Joint Applicants' claim, the ability of an ISP to reach the merged entity's customers "through alternative methods and routes," Joint Reply at 85, does not serve to constrain a merged WorldCom/MCI's ability to impose unreasonable interconnection rates. Nor does it enable the ISP to avoid paying such rates. The fact is that such ISP will have to reach WorldCom/MCI's customers through an ISP that is connected to the WorldCom/MCI backbone network and that may already be paying unreasonable interconnection rates to WorldCom/MCI. The interconnecting ISP will necessarily have to include these rates in its charges to its ISP customers.

internationally; (2) maintain nodes with default-free routers; (3) interconnect at a minimum of five major NAPs and on a private bilateral basis with other backbone providers and ISPs; and (4) exchange traffic with other core backbone providers. Constructing a national and international high speed network with special routers and interconnection points may involve hundreds of millions of dollars. It may also require the procurement of a substantial amount of scarce Internet network engineering talent and know-how, and the implementation of billing, customer support, sales and other back-office systems which can take years to develop at the scale needed to be core Internet backbone provider. In addition, if, after the merger, the combined WorldCom/MCI entity refuses to enter into settlement-free peering arrangements with competing core backbone providers, including those that are already in the market, it will be especially difficult for these competitors to obtain satisfactory alternative settlements-free routing arrangements from the remaining core providers.

The proposed merger, by increasing the disparity in size between WorldCom/MCI and its core backbone competitors, will make it difficult for any Internet backbone provider to successfully erode the dominance of a merged WorldCom/MCI entity in the core Internet backbone market. Given this difficulty, a potential entrant is unlikely to risk the large capital

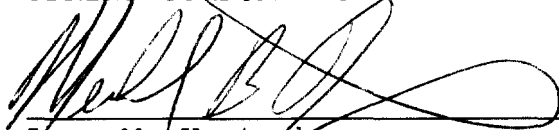
expenditure necessary to become a core backbone provider. Thus, it is necessary for the Commission to act to prevent the accumulation of market power by WorldCom/MCI in the provision of Internet backbone services by conditioning its approval of the merger on the divestiture of either WorldCom's or MCI's Internet assets.

IV. CONCLUSION.

For the reasons set forth above, Sprint respectfully requests that the Commission's approval of WorldCom's acquisition of MCI be conditioned as recommended by Sprint.

Respectfully submitted,

SPRINT CORPORATION

A handwritten signature in black ink, appearing to read 'Leon M. Kestenbaum', is written over a horizontal line.

Leon M. Kestenbaum

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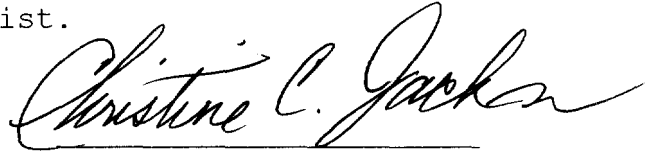
(202) 828-7438

Its Attorneys

March 13, 1998

Certificate of Service

I hereby certify that a copy of the foregoing **Comments of Sprint Corporation** was sent by hand or by United States first-class mail, postage prepaid, on this the 13th day of March, 1998 to the parties on the attached list.

A handwritten signature in cursive script, reading "Christine C. Jackson", written over a horizontal line.

Christine C. Jackson

March 13, 1998

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